



INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
MARION HIGH SCHOOL, MARION, INDIANA



CRIMINAL LAW

Did the police have **reasonable suspicion** to stop, detain, and search an individual in a vehicle parked in a high-crime area where an officer observed a known fugitive approach the car and then flee upon seeing the police officers, and where the individual failed to comply with police demands to exit the vehicle?

*Bruce
Antonio
Howard
v. State
of
Indiana*

CASE SYNOPSIS

Facts and Procedural History

On October 6, 2005, Officer Vantlin of the Evansville Police Department responded to a call to report to an apartment complex known for a high rate of crime. There, he spotted an individual he knew had various outstanding warrants for his arrest, walking toward a blue Impala in the parking lot. The suspected fugitive saw Officer Vantlin and fled behind the apartment buildings. Officer Vantlin recognized that the occupant of the vehicle was Howard, whom he had arrested on prior occasions.

Howard failed to comply with initial police requests to show his hands and fidgeted in his vehicle. The officers approached the vehicle and

asked Howard to step out. Howard did not comply until Officer Vantlin opened Howard's driver-side door and directed him to step out of the vehicle. Once Howard was out of the vehicle, Officer Vantlin conducted a pat-down search of Howard's person and found 11.46 grams of crack cocaine and 1.69 grams of marijuana.

The State charged Howard with **dealing in cocaine** as a Class A felony, **possession of cocaine** as a Class A felony, and **possession of marijuana** as a Class D felony. A jury convicted Howard as charged and the trial court sentenced Howard to thirty years of incarceration. Howard now appeals.

Parties' Arguments

Howard contends that, based on the totality of the circumstances, the police did not

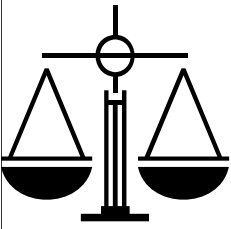
Appeal from:

Vanderburgh
Circuit Court

The Honorable
David D. Kiely,
Judge

Oral Argument:

February 21,
2007
10:00 a.m. –
10:40 a.m.
20 minutes
each side



Bruce Antonio Howard v. State of Indiana

Case Synopsis *(continued)*

Opinion in this case expected:

By late spring 2007

Mr. Munn will be notified when the Court's decision is handed down. Check the Court's web-page at <http://www.in.gov/judiciary/opinions/appeals.html> to read the opinion.

have reasonable suspicion necessary to detain him or his vehicle, and, even if they did, the State never established that the officers reasonably believed Howard was armed and dangerous, making Officer Vantlin's search of Howard's outer clothing unreasonable. Further, Howard asserts that the stop was unreasonably long for a **Terry** stop exception, requiring a stricter showing of **probable cause**, which the State did not do.

The State contends that the initial stop was consistent with *Terry* and the pat-down search of Howard were reasonable. First, the State argues that the initial stop was reasonable in that they only briefly detained Howard for investigatory purposes. Second, the State claims the pat-down search was a search for weapons that was based on the officers' reasonable suspicion.

GLOSSARY OF TERMS

Reasonable suspicion – The quantum of knowledge sufficient to induce an ordinarily prudent and cautious man under any circumstances to believe that criminal activity is at hand, thereby legally justifying an officer to stop an individual in a public place. Something less than probable cause. (See below.)

Dealing in cocaine – The knowing or intentional delivery of cocaine, or the knowing or intentional possession of cocaine with the intent to distribute the same.

Possession of cocaine – the knowing or intentional keeping of cocaine without a valid prescription or order.

Possession of marijuana – the knowing or intentional keeping of marijuana without a valid prescription or order.

Terry stop – The United States Supreme Court ruled in *Terry v. Ohio* (1968) that a police officer may briefly detain a person for investigatory purposes without a warrant or probable cause, if, the officer has reasonable suspicion. (See above.) Further, an officer may conduct a pat-down search of the person's outer-clothing if the officer reasonably believes the person may be armed and dangerous.

Probable cause – A reasonable ground for belief that a person should be arrested or searched.

TODAY'S PANEL OF JUDGES

Hon. James S. Kirsch (Marion County), Presiding

- Judge of the Court of Appeals since March 1994
- Chief Judge of the Court since March 2004

James S. Kirsch was appointed to the Court of Appeals in March 1994 and was elected Chief Judge in March 2004. A native of Indianapolis, Judge Kirsch is a graduate of the Indiana University School of Law at Indianapolis (J. D., cum laude, 1974) and Butler University (B.A. with honors, 1968). He served as Judge of the Marion Superior Court from 1988 to 1994 and as presiding judge of the court in 1992. From 1974 to 1988, he practiced law with the firm of Kroger, Gardis & Regas in Indianapolis in the areas of commercial and business litigation and served as managing partner of the firm.

Since 1990, Chief Judge Kirsch has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue University. Judge Kirsch is a past-president of the Indianapolis Bar Association and of the Indianapolis Bar Foundation and a former member of the Board of Visitors of the Indiana University School of Law-Indianapolis.

Judge Kirsch is a past-president of the United Way/Community Service Council Board of Directors and a current or former member of the Board of Directors of the United Way of Central Indiana, the Board of Associates of Rose Hulman Institute of Technology, and of the Boards of Directors of the Goodwill Industries Foundation of Central Indiana, Community Centers of Indianapolis, the Indianapolis Urban League, the Legal Aid Society of Indianapolis, and the Stanley K. Lacy Leadership Association.

Judge Kirsch is also a Fellow of the Indiana State Bar Foundation and of the Indianapolis Bar Foundation. He is a frequent speaker and lecturer and has served on the faculty of more than 200 continuing legal education programs. He has been named a Sagamore of the Wabash by four different governors.

Judge Kirsch and his wife Jan have two children, Adam, a senior at Wabash College, and Alexandra, a senior at Cathedral High School. Chief Judge Kirsch was retained on the Court in 1996 and 2006.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began just prior to the Court's centennial in 2001.

Today's oral argument is the 175th case the Court of Appeals has heard "on the road" since early 2000.

Among the sites for traveling oral arguments are law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. John T. Sharpnack (Bartholomew County), Presiding

- Judge of the Court of Appeals since January 1991

John T. Sharpnack, a native of Columbus, was appointed to the Court of Appeals by Governor Evan Bayh. He received his undergraduate and law degrees from the University of Cincinnati, where he was also Editor-in-Chief of the Law Review. Between degrees, he served a tour in the United States Army.

Following graduation from law school in 1960, Judge Sharpnack joined the Honor Graduate Program at the Antitrust Division of the U.S. Department of Justice in Washington, DC as an attorney. Three years later he returned to Columbus, becoming a partner at Sharpnack, Bigley, David and Rumble, where he practiced until his appointment to the Court.

While in private practice, Judge Sharpnack was active in legal associations and community groups. He served as Chairman of both the Trial Section and the House of Delegates of the Indiana State Bar Association, and for five years was a member of the State Bar's Ethics Committee. For six years he was a member of the Indiana Supreme Court Committee on Rules of Practice and Procedure, and from 1987 to 1988, he was President of the Indiana Defense Lawyers Association.

Judge Sharpnack also served on several local boards, including the Foundation for Youth, the United Way, and the Harrison Township Volunteer Fire Department.

Judge Sharpnack was retained on the Court of Appeals by election in 1994 and 2004.

The 15 members of the Indiana Court of Appeals issue some 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.

TODAY'S PANEL OF JUDGES

Hon. Nancy H. Vaidik (Porter County)

- Judge of the Court of Appeals since January 2000

Nancy H. Vaidik was appointed to the Court by Governor Frank O'Bannon on January 19, 2000. Judge Vaidik, who grew up in Portage, Indiana, graduated from Valparaiso University with High Distinction in 1977 and Valparaiso University School of Law in 1980.

Prior to her elevation to the appellate court, Judge Vaidik served as a trial court judge in Porter County for seven years. She began her legal career with the Porter County Prosecutor's Office, achieving the status of chief deputy prosecutor before joining the law firm of J.J. Stankiewicz and Associates.

Judge Vaidik is a former adjunct professor of law at Valparaiso University School of Law and is currently an adjunct professor of law at Indiana University School of Law in Bloomington. She teaches for the National Institute for Trial Advocacy and the College of Law of England and Wales. She is the former president of the Indiana Judge's Association and has received numerous awards, including the Indiana Domestic Violence Coalition Judge of the Year and the Paragon of Justice award from the BLSA and HLSA chapters at Valparaiso University School of Law.

Judge Vaidik, who was retained on the Court by election in 2002, is married and has two daughters.

ATTORNEYS FOR THE PARTIES

For Appellant, Bruce Antonio Howard:
John Andrew Goodridge
Evansville

No information on Mr. Goodridge was made available to the Court.

ATTORNEYS FOR THE PARTIES

For Appellee, State of Indiana:

Mara McCabe
Deputy Attorney General
Indianapolis

Mara McCabe graduated from Butler University in 1990 with a Bachelor of Arts degree in Journalism. After short stints at the Indianapolis *Star* and the Phoenix Theatre, she attended Ohio Northern University College of Law and was awarded a J.D., with Distinction, in 1998.

She began her legal career at the Marion County Prosecutor's Office, where she divided her time as the sole prosecutor with both the Drug Treatment Court Program and the Indianapolis Police Department's CORE auto theft unit.

In 2003, Ms. McCabe started at the Indiana Attorney General's Office in the Tort Litigation Section, representing all state agencies in tort claims matters.

In 2005, she transferred to the Criminal Appeals Division, representing the State of Indiana in appeals of criminal cases. Additionally, she serves as extradition and detainers counsel for the State and handles all extradition matters involving fugitives to and from Indiana. Ms. McCabe was recently asked to join the Board of Directors of the National Association of Extradition Officials, an organization that assists officials across the country with extradition and detainers matters via training, law updates, and communications.

Ms. McCabe lived for a time in Glasgow, Scotland, the hometown of her husband, David Cuthbert. While there, she developed a love for single nougats, Irn Bru soda and the Clyde Football Club, and spent many hours hoping to catch a glimpse of the Loch Ness Monster. She is the proud "mom" of two pet rats, Gypsy and Molly. In her free time, she plays soccer in two women's leagues.

AMICUS BRIEFS

A person who is not a party to a lawsuit may file a brief of amicus curiae, with permission of the Court, if he or she has a strong interest in the subject matter.

- There are no amicus briefs in this case.